

ASSEMBLY BILL NO. 322—ASSEMBLYMAN HETTRICK

MARCH 12, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Limits payment of compensation for subsequent injuries from subsequent injury fund for private carriers to injuries that occur before certain date and eliminates fund upon occurrence of certain conditions. (BDR 53-787)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to industrial insurance; limiting payment for subsequent injuries from the subsequent injury fund for private carriers to injuries that occur before a certain date; eliminating the subsequent injury fund for private carriers when it is determined that no claims have been filed against the fund by a certain date or that all such claims have been denied or that all such claims that were accepted have been paid in full; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1     **Section 1.** NRS 616B.587 is hereby amended to read as follows:  
2     616B.587 Except as otherwise provided in NRS 616B.590:  
3     1. If an employee of an employer who is insured by a private carrier  
4     has a permanent physical impairment from any cause or origin and ***, before***  
5     ***July 1, 2001,*** incurs a subsequent disability by injury arising out of and in  
6     the course of his employment which entitles him to compensation for  
7     disability that is substantially greater by reason of the combined effects of  
8     the preexisting impairment and the subsequent injury than that which  
9     would have resulted from the subsequent injury alone, the compensation  
10    due must be charged to the subsequent injury fund for private carriers in  
11    accordance with regulations adopted by the administrator.  
12    2. If the subsequent injury of ~~such an~~ the employee ***that occurred***  
13    ***before July 1, 2001,*** results in his death and it is determined that the death  
14    would not have occurred except for the preexisting permanent physical  
15    impairment, the compensation due must be charged to the subsequent  
16    injury fund for private carriers in accordance with regulations adopted by  
17    the administrator.  
18    3. As used in this section, “permanent physical impairment” means  
19    any permanent condition, whether congenital or caused by injury or



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1 disease, of such seriousness as to constitute a hindrance or obstacle to  
2 obtaining employment or to obtaining reemployment if the employee is  
3 unemployed. For the purposes of this section, a condition is not a  
4 "permanent physical impairment" unless it would support a rating of  
5 permanent impairment of 6 percent or more of the whole man if evaluated  
6 according to the American Medical Association's Guides to the Evaluation  
7 of Permanent Impairment as adopted and supplemented by the division  
8 pursuant to NRS 616C.110.

9 4. To qualify under this section for reimbursement from the  
10 subsequent injury fund for private carriers, the private carrier must  
11 establish by written records that the employer had knowledge of the  
12 "permanent physical impairment" at the time the employee was hired or  
13 that the employee was retained in employment after the employer acquired  
14 such knowledge.

15 5. A private carrier shall notify the administrator of any possible claim  
16 against the subsequent injury fund for private carriers as soon as  
17 practicable, but not later than ~~100~~ 24 weeks after the injury or death.

18 6. The administrator shall adopt regulations establishing procedures  
19 for submitting claims against the subsequent injury fund for private  
20 carriers. The administrator shall notify the private carrier of his decision on  
21 such a claim within 90 days after the claim is received.

22 7. An appeal of any decision made concerning a claim against the  
23 subsequent injury fund for private carriers must be submitted directly to the  
24 appeals officer. The appeals officer shall hear such an appeal within 45  
25 days after the appeal is submitted to him.

26 **Sec. 2.** NRS 616B.590 is hereby amended to read as follows:

27 616B.590 1. A private carrier who pays compensation due to an  
28 employee who has a permanent physical impairment from any cause or  
29 origin and *who, before July 1, 2001,* incurs a subsequent disability by  
30 injury arising out of and in the course of his employment which entitles  
31 him to compensation for disability that is substantially greater by reason of  
32 the combined effects of the preexisting impairment and the subsequent  
33 injury than that which would have resulted from the subsequent injury  
34 alone is entitled to be reimbursed from the subsequent injury fund for  
35 private carriers if:

36 (a) The employee knowingly made a false representation as to his  
37 physical condition at the time he was hired by the employer insured by a  
38 private carrier;

39 (b) The employer relied upon the false representation and this reliance  
40 formed a substantial basis of the employment; and

41 (c) A causal connection existed between the false representation and the  
42 subsequent disability.

43 If the subsequent injury of the employee *that occurred before July 1,*  
44 *2001,* results in his death and it is determined that the death would not have  
45 occurred except for the preexisting permanent physical impairment, any  
46 compensation paid is entitled to be reimbursed from the subsequent injury  
47 fund for private carriers.

48 2. A private carrier shall notify the administrator of any possible claim  
49 against the subsequent injury fund for private carriers pursuant to this



1 section ~~not~~ **not** later than ~~60~~ **30** days after the date of the subsequent  
2 injury or the date the employer learns of the employee's false  
3 representation, whichever is later.

4 **Sec. 3.** NRS 616B.584, 616B.587 and 616B.590 are hereby repealed.

5 **Sec. 4.** 1. As soon as practicable after December 17, 2001, the  
6 administrator of the division of industrial relations of the department of  
7 business and industry shall determine:

8 (a) Whether any claims have been filed in a timely manner pursuant to  
9 NRS 616B.587 or 616B.590 against the subsequent injury fund for private  
10 carriers;

11 (b) Whether, according to the provisions of NRS 616B.587 or  
12 616B.590, such claims are accepted or denied by the administrator; and

13 (c) If all claims have been denied, whether the insurer has appealed the  
14 denial and the outcome of the appeal.

15 2. If the administrator determines that no claims have been filed in a  
16 timely manner against the subsequent injury fund for private carriers, or  
17 that one or more claims have been filed but he has denied all such claims  
18 and the period for appealing such claims has expired or the insurer or  
19 insurers were not successful on appeal, the administrator shall notify the  
20 governor and the director of the legislative counsel bureau of that  
21 determination. If satisfied with the determination of the administrator  
22 pursuant to this subsection, the governor shall issue a proclamation stating  
23 that the subsequent injury fund for private carriers has no further liability  
24 because there are no accepted claims pending against the fund.

25 3. If the administrator determines that one or more claims have been  
26 filed in a timely manner against the subsequent injury fund for private  
27 carriers and he has accepted at least one of those claims, the administrator  
28 shall:

29 (a) Determine the liability of the fund for the payment in full of those  
30 accepted claims.

31 (b) Adopt regulations:

32 (1) For the establishment and administration of a one-time  
33 assessment, payable by all private carriers, as he determines is necessary to  
34 collect sufficient money to extinguish completely the liability of the fund  
35 for those accepted claims. The assessment rate must be based upon the  
36 expected annual expenditures for those accepted claims and must result in  
37 an equitable distribution of costs among all private carriers.

38 (2) Specifying that the administrator will provide money to the  
39 insurers who have filed those accepted claims through a lump-sum  
40 payment to the insurer in an amount governed by section 6 of this act.

41 (c) When he determines that money for the payment in full of all those  
42 accepted claims against the fund has been provided to the appropriate  
43 insurers, notify the governor and the director of the legislative counsel  
44 bureau of that determination. If satisfied with the determination of the  
45 administrator pursuant to this subsection and provided that the governor  
46 has not already issued a proclamation pursuant to subsection 2, the  
47 governor shall issue a proclamation stating that the subsequent injury fund  
48 for private carriers has no further liability because all accepted claims  
49 against the fund have been paid in full.



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1     **Sec. 5.** 1. A determination of the administrator of the division of  
2 industrial relations of the department of business and industry as to how  
3 much money the subsequent injury fund for private carriers will provide in  
4 a lump-sum payment to the insurer for an accepted claim is not negotiable  
5 with the insurer. An insurer may appeal such a determination by submitting  
6 an appeal directly to an appeals officer. The appeals officer shall hear such  
7 an appeal within 45 days after the appeal is submitted to him.

8     2. If an insurer does not appeal such a determination of the  
9 administrator or if the appeal of the insurer is denied, the insurer may not  
10 make any further claim for payment for that claim against the fund, or  
11 against the administrator or the division and the fund is no longer  
12 responsible for payment or provision of any money to provide  
13 compensation to the injured employees or their dependents. If, after the  
14 closure of a claim that received payment from the fund, an injured  
15 employee applies to reopen the claim, the insurer shall reopen the claim if  
16 the applicant meets the criteria of NRS 616C.390 and any other applicable  
17 provisions of NRS, regardless of the previous acceptance of the claim by  
18 the administrator and receipt of money from the fund.

19     **Sec. 6.** 1. The regulations adopted pursuant to subsection 3 of  
20 section 4 of this act:

21     (a) May include provisions requiring the insurers who have filed claims  
22 that have been accepted by the administrator of the division of industrial  
23 relations of the department of business and industry to submit information  
24 to the administrator to assist him in determining the liability of the fund for  
25 the payment in full of those claims; and

26     (b) Must be consistent with subsections 2 to 5, inclusive, of  
27 NRS 616B.584 and must specify that the lump-sum payment to an insurer  
28 will be in the amount of the sum of:

29         (1) The present value of the claim for the type of compensation to  
30 which the injured employee or his dependents is determined to be entitled  
31 pursuant to NRS 616C.440, 616C.475, 616C.490, 616C.500, 616C.505 or  
32 616C.575; and

33         (2) A reasonable estimate of the amount of accident benefits to which  
34 the injured employee will be entitled.

35     2. If the regulations adopted by the administrator pursuant to  
36 subsection 3 of section 4 of this act provide for the establishment and  
37 administration of a one-time assessment, the commissioner shall assign an  
38 actuary to review the establishment of the assessment rates. The rates must  
39 be filed with the commissioner 30 days before their effective date. Any  
40 private carrier who wishes to appeal the rates so filed must do so pursuant  
41 to NRS 679B.310.

42     **Sec. 7.** 1. If any money remains in the subsequent injury fund for  
43 private carriers that is attributable to assessments paid by private carriers  
44 and which is not committed for expenditure, the state treasurer shall refund  
45 that money to the private carriers. The amount of a refund to a private  
46 carrier must be proportional to the assessments paid by the private carrier.

47     2. If any bond, security or other property remains in the subsequent  
48 injury fund for private carriers that was received from or on behalf of a  
49 private carrier and which has no claim made against it, the state treasurer



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1 shall return the bond, security or other property to the private carrier or  
2 other person from whom it was received.

3 3. If any money remains in the subsequent injury fund for private  
4 carriers that is attributable to penalties paid by private carriers or income  
5 realized from the investment of the assets of the fund, the state controller  
6 shall transfer that amount to the state general fund.

7 **Sec. 8.** 1. This section and sections 1, 2, 4, 5 and 6 of this act  
8 become effective on July 1, 2001.

9 2. Sections 3, 7 and 9 of this act become effective:

10 (a) On the date the governor issues a proclamation pursuant to  
11 subsection 2 of section 4 of this act; or

12 (b) On the date the governor issues a proclamation pursuant to  
13 subsection 3 of section 4 of this act,

14 whichever occurs in accordance with the provisions of section 4 of this act.

15 If the governor does not issue a proclamation pursuant to either subsection  
16 2 or 3 of section 4 of this act, sections 3, 7 and 9 of this act do not become  
17 effective.

18 **Sec. 9.** The legislative counsel shall:

19 1. In preparing the reprint and supplements to the Nevada Revised  
20 Statutes, appropriately correct any obsolete or incorrect reference to the  
21 subsequent injury fund for private carriers.

22 2. In preparing supplements to the Nevada Administrative Code,  
23 appropriately correct any obsolete or incorrect reference to the subsequent  
24 injury fund for private carriers.

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## TEXT OF REPEALED SECTIONS

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### **616B.584 Subsequent injury fund for private carriers established; purpose; disbursements; investments; assessment rates, payments and penalties.**

1. There is hereby established as a special revenue fund in the state treasury the subsequent injury fund for private carriers, which may be used only to make payments in accordance with the provisions of NRS 616B.587 and 616B.590. The administrator shall administer the fund.

2. All assessments, penalties, bonds, securities and all other properties received, collected or acquired by the administrator for the subsequent injury fund for private carriers must be delivered to the custody of the state treasurer.

3. All money and securities in the fund must be held by the state treasurer as custodian thereof to be used solely for workers' compensation for employees whose employers are insured by private carriers.

4. The state treasurer may disburse money from the fund only upon written order of the state controller.

5. The state treasurer shall invest money of the fund in the same manner and in the same securities in which he is authorized to invest state general funds which are in his custody. Income realized from the investment of the assets of the fund must be credited to the fund.



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6. The administrator shall adopt regulations for the establishment and administration of assessment rates, payments and penalties. Assessment rates must reflect the relative hazard of the employments covered by private carriers and must be based upon expected annual expenditures for claims for payments from the subsequent injury fund for private carriers.

7. The commissioner shall assign an actuary to review the establishment of assessment rates. The rates must be filed with the commissioner 30 days before their effective date. Any private carrier who wishes to appeal the rate so filed must do so pursuant to NRS 679B.310.

**616B.587 Payment of cost of additional compensation resulting from subsequent injury of employee of employer insured by private carrier.** Except as otherwise provided in NRS 616B.590:

1. If an employee of an employer who is insured by a private carrier has a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone, the compensation due must be charged to the subsequent injury fund for private carriers in accordance with regulations adopted by the administrator.

2. If the subsequent injury of such an employee results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the compensation due must be charged to the subsequent injury fund for private carriers in accordance with regulations adopted by the administrator.

3. As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a "permanent physical impairment" unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

4. To qualify under this section for reimbursement from the subsequent injury fund for private carriers, the private carrier must establish by written records that the employer had knowledge of the "permanent physical impairment" at the time the employee was hired or that the employee was retained in employment after the employer acquired such knowledge.

5. A private carrier shall notify the administrator of any possible claim against the subsequent injury fund for private carriers as soon as practicable, but not later than 100 weeks after the injury or death.

6. The administrator shall adopt regulations establishing procedures for submitting claims against the subsequent injury fund for private carriers. The administrator shall notify the private carrier of his decision on such a claim within 90 days after the claim is received.



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7. An appeal of any decision made concerning a claim against the subsequent injury fund for private carriers must be submitted directly to the appeals officer. The appeals officer shall hear such an appeal within 45 days after the appeal is submitted to him.

**616B.590 Reimbursement of private carrier for cost of additional compensation resulting from subsequent injury.**

1. A private carrier who pays compensation due to an employee who has a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone is entitled to be reimbursed from the subsequent injury fund for private carriers if:

(a) The employee knowingly made a false representation as to his physical condition at the time he was hired by the employer insured by a private carrier;

(b) The employer relied upon the false representation and this reliance formed a substantial basis of the employment; and

(c) A causal connection existed between the false representation and the subsequent disability.

If the subsequent injury of the employee results in his death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, any compensation paid is entitled to be reimbursed from the subsequent injury fund for private carriers.

2. A private carrier shall notify the administrator of any possible claim against the subsequent injury fund for private carriers pursuant to this section no later than 60 days after the date of the subsequent injury or the date the employer learns of the employee's false representation, whichever is later.

